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IN THE

Supreme Court of the United States

October Term, 1968

No. 512

GENERAL TIME CORPORATION,

Petitioner,

against

SECURITIES AND EXCHANGE COMMISSION, TALLEY INDUSTRIES, INC., AMERICAN INVESTORS FUND, INC., and CHESTNUTT CORPORATION,

Respondents.

BRIEF OF RESPONDENT TALLEY INDUSTRIES, INC., IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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Of Counsel.

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Respondent Talley Industries Inc. ["Industries"] submits that the petition for writ of certiorari filed by General Time Corporation ["General Time"] should be denied because of the non-final state of the litigation below.

The decision of the Court of Appeals at issue did not finally terminate this litigation in the courts below, but merely reversed the District Court's dismissal of the plaintiff Securities and Exchange Commission's complaint, with instructions to the District Court to enter appropriate injunctive relief. Petitioner General Time, a co-defendant with respondent Industries below, does not in any way

challenge the correctness of the Court of Appeals' holding that the District Court's dismissal of the complaint should be reversed, but complains that the Court of Appeals erred in advising the District Court that relief in the form of disfranchisement of the General Time shares owned by American Investors Fund Inc. and the shares owned by Industries seemed, as the Court of Appeals was then "at present advised" (Pet. for writ of cert., Appendix A, p. 17a) inappropriate.

Since the issuance of that opinion, and since the filing of General Time's petition for certiorari directed thereto, the United States District Court for the Southern District of New York has acted in response to the mandate of the Court of Appeals below (Pet. for writ of cert., Appendix E, p. 52a) and entered a final judgment on October 4, 1968. On October 8th, petitioner filed a Notice of Appeal to the Court of Appeals from the final judgment of the District Court entered October 4th. The Court of Appeals, on October 9th, fixed dates for filing of briefs by appellant (October 18th) and by appellees (October 28th) and has set the case for argument on November 1, 1968. The Court of Appeals has stayed any action on the disputed stockholders' vote of April 22, 1968 pending determination of that appeal.

On October 9, 1968, Securities and Exchange Commission, plaintiff below and one of the respondents here, advised the Court of Appeals that the Commission will not appeal the aforesaid final judgment of the District Court.

Thus, since the entry of the non-final decision by the Court of Appeals, with its non-final suggestions as to appropriate relief, a final judgment has now been entered in the District Court and an appeal has been taken by petitioner General Time to the Court of Appeals which appeal will shortly lead to that Court's final determination on all issues, including the issues raised by the petition, i.e., issues related to relief.

We submit that it is manifestly inappropriate at this juncture for this Court to grant review of a non-final decision on an issue which is shortly due to be finally decided.

In view of the present posture of this litigation we do not address ourselves to the substantive issues raised in the petition of General Time Corporation.

CONCLUSION

General Time Corporation's petition for writ of certiorari should be denied.

Respectfully submitted,

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